

**IN THE CHANCERY COURT FOR HAMILTON COUNTY, TENNESSEE**

**AT CHATTANOOGA**

**STATE OF TENNESSEE, *ex rel.* PAUL G.**

**SUMMERS, Attorney General & Reporter,**

**Plaintiff,**

**v.**

**E. ALFRED BIBBINS a/k/a**

**ED OWENS a/k/a Dr. EDDIE OWENS**

**Defendant.**

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**COMPLAINT**

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This civil action is brought in the name of the State of Tennessee, by and through Paul G. Summers, the Attorney General and Reporter ("Attorney General"), pursuant to Tenn. Code Ann. §§ 47-18-108(a)(1), 47-18-114, and 47-18-320 at the request of David A. McCollum, Director of the Division of Consumer Affairs of the Tennessee Department of Commerce and Insurance ("Division"). The Division has reason to believe that the Defendant named herein has violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, the Tennessee Health Club Act, Tenn. Code Ann. § 47-18-301 *et seq.*, and that this action is in the public interest.

## **I. JURISDICTION AND VENUE**

1. The jurisdiction of this Court is invoked pursuant to Tenn. Code Ann. § 47-18-108. Venue is proper in Shelby County because it is a county in which Defendant conducts or has conducted business. *See* Tenn. Code Ann. § 47-18-108(a)(3). Defendant has been provided with the ten (10) days notice of contemplated legal action as set forth in Tenn. Code Ann. § 47-18-108(a)(2).

## **II. PARTIES**

2. Pursuant to Tenn. Code Ann. § 47-18-108(a)(1) and 47-18-114, this action is commenced in the name of the State of Tennessee, by the Attorney General Paul G. Summers, at the request of the Division. (See Exhibit A, Affidavit and Verification of David A. McCollum, Director of the Division of Consumer Affairs).

3. Defendant ATC Fitness of Bartlett, Inc. is a Tennessee corporation operating a health club commonly know as ATC Fitness or ATC Fitness of Bartlett. The corporation was formed on December 10, 1991. The corporation was administratively dissolved on June 18, 1993 and reinstated on April 1, 1994. The corporation was again administratively dissolved on June 17, 1994 and reinstated on April 1, 1995. The corporation was administratively dissolved a third time on June 2, 1997 and reinstated on April 1, 1998.

## **III. FACTUAL ALLEGATIONS**

Upon information and belief, the State alleges as follows:

4. At an exact time unknown to the Plaintiff but approximately December, 1991, Defendant ATC Fitness of Bartlett, Inc. purchased a health club ("ATC Fitness") as defined by Tenn. Code Ann. § 47-18-301(3).

5. On October 22, 1998, the Division issued a certificate of health club registration to Defendant. This certificate was forwarded to the Defendant by letter dated November 4, 1998. This registration certificate was valid from October 22, 1998 to October 22, 1999. Exhibit B is a true and exact copy of the certificate of registration.

6. On November 4, 1998, the Division forwarded the certificate of registration to the Defendant along with a letter informing the Defendant that it is responsible for renewing the certificate. Exhibit C is a true and exact copy of the November 4, 1998 letter and the return receipt card signed by Keith Patterson. The return receipt card was received by the Division on November 17, 1998.

7. On August 23, 1999, the Division notified Defendant that its certificate of registration would expire on October 22, 1999. Exhibit D is a true and exact copy of the August 23, 1999 letter along with the return receipt signed by Julie Patterson on August 26, 1999.

8. On October 28, 1999, the Division again notified the Defendant that it had not renewed its certificate

of registration. Exhibit E is a true and exact copy of the October 28, 1999 letter along with the return receipt signed by Christy "Norrel" dated November 11, 1999.

9. On December 3, 1999, the Division again notified the Defendant that it had not renewed its certificate of registration. Exhibit F is a true and exact copy of the December 3, 1999 letter along with the return receipt signed by Laura "Barte" dated December 10, 1999. No response was received from the Defendant.

10. On December 15, 1999, Charles Randles of the Division telephoned Defendant's representative, Mr. Patterson and left a message. On that same day, Mr. Patterson returned the call and stated he was about 3 months late but that he was traveling and would take care of the registration.

11. In January of 2000, Mark Williams, the former director of the Division of Consumer Affairs, referred the matter of Defendant's lack of registration to the Attorney General's Office pursuant to Tenn. Code Ann. § 47-18-108(a)(1).

12. On March 2, 2000, the Attorney General's Office notified the Defendant that its health club was unregistered. Exhibit G is a true and exact copy of the March 2, 2000 letter and the return receipt card signed by "B A Lade" on March 6, 2000. The Attorney General's Office received no response from the Defendant.

13. On or about March 23, 2000, Mr. Patterson called the Division of Consumer Affairs and spoke with Charles Randles. Mr. Patterson stated that he was going to go ahead and register.

14. By March 30, 2000, Charles Randles had not received a registration application from Mr. Patterson.

15. On March 30, 2000, the Attorney General's Office, at the request of David A. McCollum, the Director of the Division of Consumer Affairs, provided the Defendant with ten days notice of the State's intention to initiate legal action. Exhibit H is a true and exact copy of the March 30, 2000 letter and the return receipt signed by someone with an unreadable signature on April 1, 2000. The Defendant again did not contact the Attorney General's Office to respond to the notice.

16. Defendant submitted a registration application to the Division on April 3, 2000 and was issued a certificate of registration by the Division on April 3, 2000. Attached as Exhibit I is a true and exact copy of that registration certificate.

17. For an exact time frame unknown to the Plaintiff but approximately six (6) months during 1999 and ending April 3, 2000, Defendant operated ATC Fitness, a health club as defined by Tenn. Code Ann. § 47-18-301(3) without a valid health club registration certificate.

18. Any health club agreements entered into while Defendant was unregistered or failed to maintain its registration are unenforceable against the respective buyers as set forth in Tenn. Code Ann. § 47-18-

303(2).

19. Defendant sold health club agreements to consumers while unregistered and has failed to affirmatively inform those buyers of health club agreements that ATC Fitness was unregistered at the time the agreements were entered into. Further, Defendant failed to affirmatively inform buyers of health club agreements that ATC Fitness failed to maintain registration during the course of the buyer's health club memberships and therefore the health club agreements are unenforceable.

20. Defendant has failed to affirmatively inform the affected consumers with existing health club agreements entered into prior to April 3, 2000 that their health club agreements are unenforceable.

21. Defendant has continued to bill the affected consumers or otherwise notify them that payments are due, accept payments and collect on the unenforceable health club agreements.

22. Defendant did not permit the affected consumers to cancel their health club agreements even though they were unenforceable.

23. The operation of ATC Fitness of Bartlett by Defendant, as alleged herein, constitutes "trade," "commerce" and/or a "consumer transaction" and the offering of or providing of "goods" and/or "services" as defined in Tenn. Code Ann. §§ 47-18-103(5), (10) and (11).

#### **IV. VIOLATIONS OF THE LAW**

24. By operating a health club without a valid certificate of registration, Defendant violated Tenn. Code Ann. § 47-18-302(a). Under Tenn. Code Ann. § 47-18-320, violation of this provision constitutes an unfair or deceptive act or practice in violation of the Tennessee Consumer Protection Act.

25. By operating a health club without a valid certificate of registration, Defendant caused a likelihood of confusion as to the approval and certification of the health club's goods and services in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(2), (b)(3), and b(27).

26. By representing or implying that any health club agreements entered into by Defendant while Defendant was not registered or failed to maintain registration are enforceable against the buyer, Defendant has represented that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, in violation of Tenn. Code Ann. §§ 47-18-104(a), (b)(12), and (b)(27).

27. By failing to inform the affected consumers with the health club agreements that the agreements are unenforceable, Defendant has engaged in unfair or deceptive acts in violation of Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

#### **PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, THE STATE OF TENNESSEE PRAYS:

- (1) That this Complaint be filed without cost bond as provided by Tenn. Code Ann. §§ 20-13-101, 47-18-108, and 47-18-116.
- (2) That process issue and be served upon Defendant requiring it to appear and answer this Complaint.
- (3) That this Court adjudge and decree that Defendant has engaged in the aforesaid acts or practices, which are in violation of the Tennessee Consumer Protection Act of 1977 and the Tennessee Health Club Act.
- (4) That this Court enjoin Defendant from engaging in the aforesaid acts or practices, which are violation of the Tennessee Consumer Protection Act of 1977 and the Tennessee Health Club Act.
- (5) That this Court adjudge and decree that the Defendant is liable to the State for the reasonable costs and expenses of the investigation and prosecution of the Defendant's actions, including attorneys' fees, as provided by Tenn. Code Ann. § 47-18-108(b)(4) and (a)(5).
- (6) That this Court make such orders or render such judgment as may be necessary to require Defendant to refund monies to the affected consumers pursuant to the unenforceability remedy set forth in Tenn. Code Ann. § 47-18-303, including but not limited to requiring that Defendant affirmatively notify in writing each and every affected consumer that entered into a health club agreement with Defendant while Defendant was not registered or prior to the lapse of the health club's registration, or were purchased by Defendant from an unregistered health club or purchased by Defendant while unregistered, that the agreement is unenforceable against the affected consumer and the affected consumer is entitled to a refund less that portion of the total price which represents actual use of the facilities and less the cost of goods and services consumed by the affected consumer as provided in Tenn. Code Ann. § 47-18-303 plus statutory interest.
- (7) That this Court adjudge and decree that the Defendant pay civil penalties of not more than One Thousand Dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3).
- (8) That all costs in this cause be taxed against Defendant.
- (9) That this Court grant Plaintiff such other and further relief as this Court deems just and proper.